

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

STEVEN WAYNE KEEFE,

Petitioner,

vs.

LEROY KIRKEGARD,

Respondent.

Cause No. CV 17-15-GF-BMM-JTJ

ORDER

This matter comes before the Court on Steven Wayne Keefe's petition seeking a writ of habeas corpus under 28 U.S.C. § 2254. Keefe is a state prisoner represented by counsel.

Keefe filed an Unopposed Motion to Stay (Doc. 4) asking the Court to hold his habeas petition in abeyance while he attempts to exhaust his state court remedies. Keefe has a petition for postconviction relief currently pending before the Cascade County District Court, *Steven Wayne Keefe v. Leroy Kirkegard*, ADV-17-0076. *Id.* at 1; (Doc. 5-3). This Court has the ability to stay petitions, provided the petitioner has good cause for his failure to exhaust, the unexhausted claims are potentially meritorious, and there is no indication that the petitioner engaged in dilatory tactics. *Rhines v. Weber*, 544 U.S. 269, 278 (2005). This same criteria applies to fully unexhausted claims. *See Mena v. Long*, 813 F. 3d 907, 912 (9<sup>th</sup> Cir. 2016).

Relying upon *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 718 (2016), Keefe challenges the sentence of life without parole he received as a juvenile. Given the timing of those decisions and of the actions filed in both this Court and the Montana state court, it appears Keefe has met the *Rhines* criteria. Moreover, Keefe’s “interest in obtaining federal review of his claims outweighs the competing interest in finality and speedy resolution of federal petitions.” *Rhines*, 544 U.S. at 278. A stay is appropriate.

Based on the foregoing, the Court enters the following:

### **ORDER**

Keefe’s Motion to Stay (Doc. 4) is **GRANTED**. This matter will be stayed and held in abeyance in order to allow Keefe to complete review of his pending state postconviction petition and any appeal therefrom.

DATED this 16th day of March 2017.

/s/ John Johnston  
John Johnston  
United States Magistrate Judge